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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re S.V., a Person Coming Under the  
Juvenile Court Law.

B220834

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK 78995)

Plaintiff and Respondent,

v.

R.V.,

Defendant and Appellant.

Appeal from an order of the Superior Court of Los Angeles County. Valerie L. Skeba, Juvenile Court Referee. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Thomas S. Szakall, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

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R.V., the father of two children, appeals from the juvenile court adjudication of a dependency petition finding he placed his children at substantial risk of serious physical injury. We conclude the juvenile court did not abuse its discretion and affirm the adjudication and disposition granting legal and physical custody of the children to their mother and terminating jurisdiction pursuant to a family law order.

### **BACKGROUND**

The two children, S.V. and her brother, came to the attention of the Department of Children and Family Services (Department) in September 2009 after father made two unsubstantiated and one demonstrably false accusation that S.V. had been sexually abused by the boyfriend of the children's mother. Before the filing in this case, there had been five previous dependency investigations of the family. In January 2005, social workers in Orange County became involved after father was arrested for domestic violence upon mother in S.V.'s presence. The couple had a difficult relationship, which ended in late 2007, and mother obtained a family law court order for joint custody of the children in early 2008.

Father and mother shared custody of the children without dispute until late 2008 or early 2009 when father discovered mother was dating Cesar G. Shortly thereafter, the first report was made that S.V. had been sexually abused; apparently father or a paternal relative reported that S.V.'s seven-year-old maternal cousin abused her. The report was investigated but never substantiated. There were two reports in March and June 2009 that mother slapped S.V. and pulled her hair and that mother left the children at home unsupervised. Father then obtained a family law order modifying the custody arrangement so that father had primary custody of the children, and mother had the children for two weekends every month.

In July 2009, father filed a request for a temporary restraining order against mother and Cesar. A week later, father made his first report that Cesar had sexually abused S.V. Father took S.V. with him to the police station on July 28, claiming that Cesar had touched S.V. on the vagina and cut her with his fingernail on June 27, leaving a bloody discharge in her panties. Father told the two investigating officers he took S.V.

to Children's Hospital for a sex-abuse examination and questioning by a social worker. The doctors found no sign of abuse, nor did they observe a scratch on or near S.V.'s vagina. The police investigators interviewed S.V. at the station. She was five years old at the time. S.V. said she would tell the police what her father had already told them, that Cesar touched her between her legs on the outside of her pants and cut her with his long fingernail. S.V. said her father did not tell her what to say but reminded her what to say.

Children's Hospital arranged for a forensic interview of S.V. on August 5, 2009. During the interview, S.V. told the examiner that she had been molested by Cesar and that she had been told what to say by her father and paternal grandmother. Consequently, S.V. underwent a second physical examination, based on her continued allegations of sexual abuse. The physical exam disclosed no abnormalities suggesting sexual molestation.

Father's application for a permanent restraining order was heard in court and denied on August 7, 2009. S.V. and her brother again spent the night with their mother on August 8 and 9. Two days later, father again took S.V. to the police station to report Cesar abused S.V. The second report was almost identical to the first. Father obtained a second temporary restraining order against mother and Cesar on August 21, 2009. The hearing on the application for permanent restraining order was set for mid-October. Father did not take the children to visit their mother the weekend after he obtained the second temporary restraining order. He took his son the last weekend in August but not S.V. because she had a cold.

Father consented to both children visiting their mother the weekend of September 11 through 13, 2009. Before the visit, with mother's permission, the police installed two surveillance cameras in the home, one in the bedroom and the other in the living room. Shortly after midnight on September 13, father called the police to report Cesar was present in the home and asked that a patrol unit visit the home because he was concerned S.V. was being molested. The police reviewed the tape the next day and found Cesar was not present in the home between the evening hours of September 12 and the

morning of September 13 as father had claimed. Only mother, S.V. and her little brother were there, asleep in bed.

Father took the children to the police station on September 14, 2009. The police interviewed S.V. again and recorded this interview. S.V. had just turned six years old. She said that two days before, Cesar had dinner at her mother's house. She was awakened by a noise that night, got up, and saw her mother in the living room with Cesar on top of her. S.V. admitted to lying about some of the things she had told the police about Cesar. She said she had told her father she had lied about some of the things Cesar did. The police tried to confront S.V. with her inconsistent statements, but she became upset and complained her stomach hurt. The police then recorded another interview of father and telephonically interviewed the paternal grandmother. At the end of their investigation, including the review of the tapes proving Cesar was not in mother's home on the night S.V. reported she saw him on top of her mother, the police arrested father for making a false police report and referred the children to the Department.

The Department detained the children and placed them in foster care. A dependency investigator interviewed S.V. in person in late October 2009. S.V. had only a vague memory of meeting Cesar once, and said she did not know the difference between a "good touch" and a "bad touch." S.V. said if someone touched her private parts and she did not want that, it would be a bad touch. But she denied ever being touched in a bad way. S.V. denied ever seeing her mother and other men naked in the home. When the investigator asked S.V. if she had ever told anyone she had been touched in a bad way or seen her mother naked with men in the home, S.V. became quiet and did not answer. After changing the topic to let S.V. relax, the investigator again asked if S.V. had ever "fibbed" or lied about being touched in a bad way or if anyone had ever asked her to "fib" or lie to a police officer, social worker, or counselor. S.V. again fell silent, then said, "[Ow], my stomach hurts," and left the room to use the bathroom. S.V.'s foster mother described S.V. as "sad" and having a "flat affect."

At the jurisdictional hearing, the court sustained allegations pursuant to Welfare and Institutions Code section 300, subdivision (b), that substantial danger exists to the

physical health of the children and/or the children were suffering severe emotional damage, and there was no reasonable means to protect them without removal from their father's custody. The court found true the allegations that father caused S.V. to make false claims of sexual abuse by her mother's boyfriend, Cesar; that father was arrested for making a false police report; and that father subjected S.V. to interviews and a physical exam regarding sex abuse, all of which endangered the children's physical and emotional health and safety and placed them at risk of physical and emotional harm and damage.<sup>1</sup> The court granted mother sole physical and legal custody of the children, giving father the right to monitored visits, and terminated jurisdiction with a family law order.

## **DISCUSSION**

### **Substantial evidence supports the jurisdictional finding.**

“We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) “ “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” [Citation.]’ [Citation.]” (*Ibid.*)

Welfare and Institutions Code section 300 provides, in part: “Any child who comes within . . . the following description[] is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse.”

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<sup>1</sup> The court also sustained allegations that father caused S.V. to make false claims that her mother abused drugs. We find it unnecessary to address those findings other than to state they are supported by substantial evidence.

Father argues the dependency court could not assert jurisdiction over him under Welfare and Institutions Code section 300, subdivision (b), because there was insufficient evidence of serious physical harm to the children and no evidence of a substantial risk of harm at the time of the jurisdictional hearing. A court may properly find a child is described by section 300, subdivision (b), when the way a parent inflicted less serious injury presents a substantial risk of future serious injury, or if the parent does other things that indicate the child is at risk of serious physical harm. (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1472 [father pinched child causing bruising, was indifferent to child's pain, and had previously beaten child's mother and threatened a stepbrother].) As the Department correctly states, the court does not have to wait until a child is seriously injured to assume jurisdiction and take steps to protect the child. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [father who commits acts of domestic violence on wife in the same household where children live presents substantial risk of serious physical harm to children].)

The record supports the dependency court's jurisdiction findings. The facts demonstrate father was either uncomprehending or indifferent to the effect on his young daughter of the ordeals he caused her to endure: medical exams, social worker interviews, forensic interviews, and police interviews, some in the middle of the night when she needed to be in bed, others that made her physically ill. Father never acknowledged at the jurisdictional hearing that he had made any false report that Cesar had sexually molested S.V. Instead, he insisted that S.V. divulged sexual abuse at the hands of Cesar and denied or downplayed the strong evidence that no such reports or abuse truly occurred.

Father testified S.V. first reported Cesar's abuse when she was not yet six years old. According to father, while in the parking lot at an In-N-Out restaurant one night, when father asked S.V. if there was anything she needed to tell him, S.V. "stood quiet for a very long time[, and] then she looked directly in my eyes." Father testified S.V. told him she saw her mother having group sex with two men, Jerry and Cesar; she couldn't see her mother because she was "buried under two men." S.V. went to bed but was

awakened by Cesar, who put his hand over her mouth and put his finger inside her, causing her to scream and struggle to fight him off, but her mother didn't hear anything because she was still having sex with Jerry. Cesar cut S.V.'s outer vaginal area with "one of his long fingernails" before he left. Father took S.V. to the Whittier Police station, which directed him to Children's Hospital. Father testified S.V. was interviewed by a social worker and two Los Angeles Police Department officers at 4:00 in the morning. Father testified that because the cut had healed, the district attorney had to reject the case for lack of physical evidence.

Further, father testified that a couple months later, while he and S.V. were at a water park, S.V. told him the same incident happened again while mother was in the shower. He filed a police report at the North Hollywood police station, but again, the district attorney rejected the case due to lack of physical evidence. Father admitted he was arrested a few weeks later for filing a false report; according to father, the arrest was for filing a false report that Cesar had violated a restraining order prohibiting contact with his children. When asked why he filed the report of violation of the restraining order, father testified, "Because [S.V.] had told me that Cesar . . . was there on Saturday." Plainly, father was in denial that S.V. had reported no such thing to him.

Asked to elaborate on cross-examination, father testified he taught S.V. to use a secret code to let him know if Cesar was in her mother's home. If Cesar was present, S.V. was to call father and say, "Hey, Daddy, I love you." If Cesar was not there, she was to say, "I love you, Daddy." When father called S.V., she said only "Hey, Daddy," before the phone was taken away from her by her little brother. Father concluded that meant Cesar was there, so he called the North Hollywood police station around midnight to report Cesar was in mother's home. Father was not asked about and did not offer testimony concerning the police surveillance video recordings that proved Cesar was not in mother's home the weekend of the alleged violation of the restraining order.

Just from the cold record of father's testimony, it is plain his descriptions of S.V.'s disclosures to him were bizarre and utterly incredible. Father adamantly insisted S.V. had been abused by Cesar and exposed to adults having intercourse, blaming mother for

all that had happened. He persisted with these assertions even after observing S.V. testify in chambers (via video camera) that she didn't really remember if her mother had a boyfriend named Cesar. S.V. testified she thought she had met Cesar but she didn't remember seeing him four months earlier, when father reported the alleged abuse and S.V. was subjected to the medical exams and many interviews by various unfamiliar authority figures.

Father's willingness to subject his five, then six-year-old-child to the frightening investigative process in order to manipulate her into promoting his interests in the custody battle with mother is not just evidence of poor judgment and insensitivity to the effect upon a child of having to undergo an official investigation. It is evidence of past serious harm and also substantial risk of future harm. Twice, father's behavior caused S.V. to be interviewed by authority figures whose questions caused S.V. to become physically ill, once in September with the police, the second time in October with a dependency investigator. His continued insistence at the jurisdictional hearing that the sexual abuse had occurred, despite overwhelming evidence of his fabrication, indicates he had no insight into the damage he had already done to S.V. and a risk that he would try to manipulate her in the future with other damaging schemes. It is no wonder the trial court found father's behavior was egregious.

According to the Child Victim Witness handbook relied upon by many judicial officers, "Children . . . differ in their ability to cope with the stress of testifying. Fears of the unknown, humiliation, loss of love, or peer rejection can make a child tearful, ill, or inarticulate in the courtroom." (Jud. Council of Cal., Bench Handbook: The Child Victim Witness (2006) § 1.3, p. 3.) In this case, S.V. was made physically ill twice by her father's coaching her what to say against her mother in the many difficult interviews by police, forensic, social worker and courtroom personnel, and made to undergo



unnecessary physical sex-abuse exams. This constitutes substantial evidence of serious physical harm or illness and of risk of future serious injury.<sup>2</sup>

**DISPOSITION**

The juvenile court's findings at the adjudication hearing and disposition orders are affirmed.

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GRIMES, J.

We concur:

RUBIN, Acting P. J.

O'CONNELL, J. \*

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<sup>2</sup> It is well settled that a sibling who has not yet suffered abuse or neglect may be adjudicated a dependent based on a parent's conduct toward another child. (E.g., *In re Edward C.* (1981) 126 Cal.App.3d 193, 203.) The court properly found Robert V. a dependent child based on father's conduct toward S.V.

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.